



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



226836

MAY 17 2001

REPLY TO THE ATTENTION OF:

**N-Forcer**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Paul J. Kurzanski  
Public Safety & Environment Department  
500 Water Street, J-275  
Jacksonville, FL 32202

Re: Property owned by CSX Transportation Inc. contiguous to and  
included in the N-Forcer Site, Dearborn, Michigan

Dear Mr. Kurzanski:

Enclosed please find a unilateral Administrative Order issued by  
the U.S. Environmental Protection Agency ("U.S. EPA") under  
Section 106 of the Comprehensive Environmental Response,  
Compensation, and Liability Act of 1980, as amended by the  
Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"),  
42 U.S.C. §9601, et seq.

Please note that the Order allows an opportunity for a  
conference if requested within 3 business days after issuance of  
the Order, or if no conference is requested, an opportunity to  
submit comments within 7 business days of issuance of the Order.

If you have any questions regarding the Order, feel free to  
contact Thomas Krueger, Assistant Regional Counsel, at (312)886-  
0562 or Brian Kelly, On-Scene Coordinator, at (734)692-7684.

Sincerely yours,

*for* Richard C. Karl, Director  
Superfund Division

Enclosure

cc: Alan Howard, Michigan Department of Environmental Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 5

IN THE MATTER OF:	)	Docket No. 14-14-A-15
	)	
N-Forcer, Dearborn, MI Site	)	ADMINISTRATIVE ORDER
	)	PURSUANT TO SECTION 106(a)
	)	OF THE COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondent:	)	COMPENSATION, AND
	)	LIABILITY ACT OF 1980,
CSX Transportation, Inc.	)	AS AMENDED, 42 U.S.C.
	)	§9606(a)

**I. JURISDICTION AND GENERAL PROVISIONS**

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to property owned by CSX Transportation Inc. ("CSXT" or "Respondent") contiguous to 14300 Henn Street, Dearborn, Michigan which is included in the N-Forcer Site. This Order requires the Respondent to conduct the removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

U.S. EPA has notified the State of Michigan of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

**II. PARTIES BOUND**

This Order applies to and is binding upon Respondent and its heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this

Order.

Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance.

### **III. FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The former W.R. Grace & Company ("WRG") Dearborn plant (also known as the N-Forcer Site) is located at 14300 Henn Street, Dearborn, Wayne County, Michigan.
2. According to WRG shipping records, the Dearborn plant processed about 206,000 tons of asbestos-contaminated vermiculite ore from Libby, Montana. The vermiculite was shipped to the plant by rail. Over time, it became known that vermiculite ore mined from Libby was contaminated with asbestos fibers, including the amphibole asbestos varieties tremolite and actinolite, as well as the related fibrous asbestiform minerals winchite, richterite, and ferroedenite. During the course of WRG operations at the Dearborn plant, asbestos containing materials were released onto the ground on and around the plant.
3. Amphibole asbestos from the Libby, Montana mine in all its forms is a hazardous substance. Asbestos can cause asbestosis and is a recognized human carcinogen, causing lung cancer and mesothelioma, a lethal neoplasm of the lining of the chest and abdominal cavities. Cancer of the larynx and esophageal lining has also been associated with exposure to asbestos. Commercial forms of asbestos have been found to be carcinogenic in experimental animals.
4. The rail line owned and operated by CSXT and its predecessors is located immediately adjacent to, to the north and east of, the Dearborn plant. This rail line was used to transport vermiculite ore and other asbestos-contaminated material into and out of the Dearborn plant.
5. On September 27, 2002, staff from U.S. EPA, the Agency for Toxic Substances and Disease Registry (ATSDR) and the Michigan Department of Community Health (MDCH) visited the Dearborn plant as part of ATSDR's National Asbestos Exposure Review. During this visit, staff observed vermiculite ore

on the ground on the north and southeast areas of the Site.

6. On January 14, 2003, U.S. EPA conducted sampling at the Dearborn plant, confirming that tremolite and actinolite asbestos was present at levels as high as 3%. These findings were documented in the *Site Assessment Report for the N-Forcer Site*, dated December 4, 2003.
7. Based on this information, U.S. EPA issued an Action Memorandum on February 27, 2005, authorizing funding to remove asbestos contamination at and near the surface of the Dearborn plant. The facility was identified as the N-Forcer Site, and U.S. EPA began its removal activities on or around April 4, 2005.
8. The asbestos contamination identified and removed from the Dearborn plant property extended to and beyond the boundary of CSXT's rail line property. U.S. EPA's *Site Assessment Report for the N-Forcer Site*, documents the presence of asbestos on and immediately adjacent to the CSXT rail line and associated property.
9. Train traffic and foot traffic passes in and around areas on Respondent's property where asbestos contamination is present. This traffic, along with potential wind dispersal of the asbestos contamination presents a potential to expose humans to asbestos contamination. The potential human health exposures are evaluated in a Health Consultation prepared by the MDCH on behalf of ATSDR.
10. The boundary of a Site or facility under CERCLA includes all areas where hazardous substances have come to be located. The CSXT rail line property is therefore considered part of the N-Forcer Site.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA determines that:

1. The N-Forcer Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
2. Libby Amphibole Asbestos in all its forms is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

3. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

4. Respondent is the present "owner" and "operator" of the railroad portion of the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20). Respondent, CSXT is also either a person who at the time of disposal of any hazardous substances owned or operated the railroad portion of the Site, or who arranged for disposal or transport for disposal of hazardous substances at the N-Forcer Site. Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR Part 300. These factors include, but are not limited to, the following:

1. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of:

As documented by soil samples, the concentrations of asbestos found in the surface soil show a human exposure pathway exists. Because the asbestos is at the surface and trains frequently pass through the area, the potential exists for asbestos to be aerosolized.

2. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of:

Asbestos is present and visible on the surface on CSXT's property, and could be aerosolized and transported off-site by vehicles, trains, and pedestrian traffic.

3. Weather conditions that may cause hazardous substances or pollutants or contaminants to

migrate or be released; this factor is present at the Site due to the existence of:

Wind, particularly in dry summer months, can also lead to migration of asbestos fibers from contaminated surfaces. Rainfall and snow melt would also tend to wash the fibers off CSXT's property and on to nearby property. Migration of asbestos back onto other portions of the N-Forcer Site could compromise the removal actions conducted there by U.S. EPA.

4. The unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because no other local, state or federal agency has the resources to independently conduct an effective response action to address the ongoing threats present on Respondent's property.
7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).
8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

#### V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, U.S. EPA hereby orders that Respondent perform the following actions:

1. Notice of Intent to Comply

Respondent shall notify U.S. EPA in writing within 3 business days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of each Respondent to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall perform the removal actions themselves or retain a contractor(s) to implement the removal actions. Respondent shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractor(s), whichever is applicable, within 5 business days of the effective date of this Order. Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondent.

The U.S. EPA has designated Brian Kelly of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Respondent shall direct all submissions required by this Order to the OSC at U.S. EPA, Mail Code SE-GI, 9311 Groh Road, Grosse Ile, Michigan 48138, by certified or express mail. Respondent shall also send a copy of all submissions to Thomas Krueger, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

### 3. Work to Be Performed

Respondents shall perform, at a minimum, the following response activities:

- a. Develop, submit for U.S. EPA approval, and implement a Health and Safety Plan;
- b. Develop, submit for U.S. EPA approval, and implement a work plan to locate, excavate and remove LA-contaminated soils and surfaces to a maximum depth of 18 inches or otherwise prevent exposure from areas contaminated with 1% or greater levels of asbestos or which may pose an inhalation hazard;
- c. Dispose of contaminated soils at a U.S. EPA-approved off-site disposal facility in accordance with the U.S. EPA Off-Site Rule (40 CFR §300.440);
- d. Perform personal air sampling and ambient air sampling during removal activities;
- e. Implement engineering measures to control dust during the cleanup;
- f. Install a recognizable marker at the bottom of the excavated area prior to backfill if asbestos remains;
- g. Restore the property where the removal actions occur to its previous condition to the extent practicable.

### 3.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondent shall submit a revised draft Work Plan within 7 business days of notification. Respondent shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan.



Respondent shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

### 3.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondent shall submit a plan for U.S. EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

### 3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance. Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

### 3.4 Reporting

Respondent shall submit a monthly written progress report to U.S. EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless

otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site, and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

### 3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

## 4. Access to Property and Information

Respondent shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Michigan representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which U.S. EPA determines to be necessary. Respondent shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order. Respondents will notify U.S. EPA in writing if sound recording, camera, or other documentary equipment is being used that is not obvious to U.S. EPA or U.S. EPA's representatives.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as U.S. EPA deems appropriate.

##### 5. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

**VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR**

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

U.S. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

#### **VII. PENALTIES FOR NONCOMPLIANCE**

Violation of any provision of this Order may subject Respondent to civil penalties of up to \$32,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1) and as adjusted by 69 Fed. Reg. 7121-27 (Feb. 13, 2004) (codified at 40 C.F.R. § 19.4) pursuant to the Debt Collection Improvement Act of 1996. Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should Respondent violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

#### **VIII. REIMBURSEMENT OF COSTS**

Respondent shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. U.S. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary, or such other summary as certified by U.S. EPA, shall serve as the basis for payment.

Respondent shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made

payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Program Accounting & Analysis Section  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - N-Forcer Site" and shall reference the payer's name and address, the U.S. EPA site identification number B55P, and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. §3717 and 4 CFR §102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

#### **IX. RESERVATION OF RIGHTS**

Nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

#### **X. OTHER CLAIMS**

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and

attorneys fees in connection with the action resolved by this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).

#### **XI. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Superfund Division, Region 5.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### **XII. NOTICE OF COMPLETION**

After submission of the Final Report, Respondent may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide written notice to the Respondent. If U.S. EPA

determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

### **XIII. ACCESS TO ADMINISTRATIVE RECORD**

The Administrative Record supporting these removal actions is available for review during normal business hours in the U.S. EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondent may contact Thomas Krueger, Assistant Regional Counsel, at (312) 886-0526 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

### **XIV. OPPORTUNITY TO CONFER**

Within 3 business days after issuance of this Order, Respondent may request a conference with U.S. EPA. Any such conference shall be held within 5 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to U.S. EPA within 2 business days following the conference, or within 7 business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference shall be directed to Thomas Krueger, Assistant Regional Counsel, at (312) 886-0562. Written submittals shall be directed as specified in Section V.2 of this Order.

### **XV. SEVERABILITY**



If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

**XVI. EFFECTIVE DATE**

This Order shall be effective 10 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 5 business days after the day of the conference.

IT IS SO ORDERED

BY:  \_\_\_\_\_

*for* Richard C. Karl, Director  
Superfund Division  
United States  
Environmental Protection Agency  
Region 5

DATE: 5/17/05

ATTACHMENT A

INDEX TO ADMINISTRATIVE RECORD

1. 00/00/05 Enforcement Action Memo
2. 02/27/05 N-Forcer Action Memo
3. 12/03 Site Assessment Report
4. 10/25/04 Draft Health Consultation (DHC)

Formal index  
is in process

ATTACHMENT B

LIABILITY FILE INDEX

1. TITLE SEARCH FOR N-FORCER SITE WAYNE COUNTY, MICHIGAN, prepared by Science Application International Corporation. January 12, 2005.
2. BOUNDARY SURVEY, prepared by GM Engineers & Associates. April 18, 2005.
3. HEALTH CONSULTATION - W.R. GRACE DEARBORN PLANT, prepared by Michigan Department of Community Health under a cooperative agreement with the Agency for Toxic Substances and Disease Registry. October 25, 2005.
4. SITE ASSESSMENT REPORT FOR THE N-FORCER SITE DEARBORN, WAYNE COUNTY, MICHIGAN, prepared by WESTON SOLUTIONS. December 4, 2003.